IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.885 of 1993

Chidambara Pathar .. Appellant

-vs=

K.R. Mani Asari .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree of the II Additional District Judge, Tiruchirapalli dated 29.7.1992 in A.S.No.79/92 confirming the judgment and decree of the District Munsif, Perambalur, in O.S.No.5 33 of 1987 dated 15.12.1988.

!For Appellant : Mr.T.Thirumaran

^For Respondent : Mr.G.Sridharan
for Mr.T.M.Hariharan

:JUDGMENT

This second appeal is directed against the judgment of the learned II Additional District Judge, Tiruchirapalli, made in A.S.No.79 of 199 2, affirming the judgment of the trial Court dismissing a suit on a promissory note.

2. The appellant, as plaintiff, filed the suit for recovery of money, based on an assignment, made in his favour by the promisee of Ex.A1 promissory note. According to the plaintiff, the defendant executed Ex.A1 promissory note on 22.11.1986 in favour of the assignor, in consideration of Rs.10,000/-, agreeing to pay the principal along with interest at 12% per annum, and the promisee under the promissory note one Shanmugam made an assignment on 27.7.1987 in favour of the plaintiff, and despite many a demand, no response was forthcoming, and hence, the suit for recovery of money.
3. The suit was resisted by the respondent/defendant stating that there was no consideration for the promissory note; that there was no occasion for the defendant to borrow any amount from one Shanmugam; that it was a bond executed in favour of Shanmugam, whereby the third parties were sent to foreign countries, and the defendant stood by way of surety; that no consideration passed that time, and hence, the suit was to be dismissed.
4. The trial Court framed the necessary issues, tried the suit and dismissed the same. An appeal at the instance of the plaintiff also met the

same fate. Hence, this second appeal at the instance of the plaintiff.
5. At the time of admission, the following substantial question of law was formulated by this Court:
"Whether the Courts below are right in dismissing the suit on the ground that the plaintiff is not a holder in due course or endorsee for collection after holding that the pronote is genuine and supported by consideration?"
6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondent on those contentions.
7. This Court is unable to see any merit in this second appeal.
8. Both the Courts below have recorded a concurrent finding that Ex.A1 promissory note was executed by the defendant in favour of the said Shanmugam, and it was supported by consideration. But, both the Courts have disagreed with the plaintiff's case, by stating that there was no proper assignment in the eye of law and have found that there was no passing of consideration, as found in the document, for the assignment in question, and taking into consideration the evidence, adduced and the recitals, found in the document, the transfer lacks good faith, and hence, the suit could not be decreed. The learned Counsel for the appellant with vigour and vehemence would submit that both the Courts have taken an erroneous view; that there was a proper transfer in good faith; that it is true that the transfer must be supported by consideration; that it is not required in law that the recital as to the assignment, should also speak about the payment of consideration by the assignee to the assignor; that both the assignor and the assignee, examined on the side of the plaintiff, have clearly spoken to the fact that there was a consideration that passed, and hence, the views taken by both the Courts, have got to be set aside, and a decree be granted in favour of the appellant.
Sec.9 of the Negotiable Instruments Act defines "holder in due course" as the person, who for consideration becomes the possessor of a promissory note, bill of exchange or a cheque payable to the bearer. Needless to say that the holder in due course means (1) He must be a holder for consideration; (2) The instrument must have been transferred to him before it became payable; and (3) He must be a transferee in good faith. In the instant case, a perusal of Ex.A2, the assignment, does not speak about the passing of the consideration.
9. As rightly pointed out by the learned Counsel for the appellant, the law does not require that it should be specifically stated as to what was the actual consideration and whether the consideration also passed. It is true that there has been an gnment. Both the witnesses, examined on the side of the plaintiff, have spoken to the fact that consideration had passed from the hands of the assignee to the assignor, which resulted in the assignment. Needless to say, in cases like this, a duty is cast upon the plaintiff to show that the transfer was made in good faith. Now, at this juncture, it becomes necessary to look into the pleadings, put forth before the trial Court by the plaintiff. What are all stated in the plaint is as follows:
"jhth g[[nuhnehl;L vGjp th';fpa rz;Kfj;jplk; 27/7/87 njjp thjp nknlhth; bgw;wpUg;gjhy; thjpf;F jhth bra;a chpik cz;L"
But, it does not whisper about the passing of the consideration, and thus, the pleading lacks in that regard. The Court is of the view that any amount of evidence that was marched before the trial Court, was of no use, and thus, it would cast a doubt as to the good faith, as required by law. Hence, both the Courts below were perfectly correct in rejecting the case of the plaintiff.
There is nothing to interfere in the concurrent findings, recorded by both the

Courts.
10. For the foregoing reasons, this second appeal fails, and the same is dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

Index: yes
Internet: yes

To:

1. The II Additional District Judge
Tiruchirapalli
2. The District Munsif
Perambalur
3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/